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No. 00-1210

IN THE
Supreme Court of the United States

MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,
Petitioner,

v.

STEVE GARVEY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF THE OFFICE OF THE COMMISSIONER OF BASEBALL IN SUPPORT OF THE PETITION

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

Pursuant to Rule 37.2 of the Rules of this Court, the Office of the Commissioner of Baseball ("Office of the Commissioner") respectfully moves for leave to file the attached brief *amicus curiae* in support of the petition. Petitioner has consented to the filing of this brief. Respondent, however, has refused consent, thus necessitating the filing of this motion.

The Office of the Commissioner is responsible for the centralized administration of the game of professional baseball. It serves as the collective bargaining representative of the 30 Major League baseball clubs, which engage in multiemployer collective bargaining with professional

baseball players through their designated bargaining representative, the Major League Baseball Players Association ("MLBPA"). The Office of the Commissioner and MLBPA are parties to a collective bargaining agreement establishing terms and conditions of employment for professional baseball players. That collective bargaining agreement provides for arbitration before an impartial arbitrator of certain disputes concerning the interpretation or application of the agreement.

The collective bargaining process is a vital part of the labor-management relationship in baseball, and the bargaining parties have established arbitration as a fundamental part of that process. With respect to those matters which the Office of the Commissioner has contractually agreed to commit to the arbitration process, it is entitled to realize the benefit for which it has bargained. The arbitral forum has been selected by the Office of the Commissioner and the union representing professional baseball players as the venue for resolving many types of disputes touching upon terms and conditions of employment, including the dispute involved here. The court of appeals' decisions at issue in this case represent an improper intrusion upon the arbitral forum and, consequently, upon the parties' contract and their commitment to collective bargaining. For this reason, the Office of the Commissioner has a strong interest in the Court's consideration of the issues raised in this case.

Accordingly, the Office of the Commissioner respectfully requests that its motion for leave to file the accompanying brief as *amicus curiae* in support of the petition be granted.

Respectfully submitted,

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BRIEF *AMICUS CURIAE* OF THE OFFICE OF THE COMMISSIONER OF BASEBALL IN SUPPORT OF THE PETITION

INTEREST OF *AMICUS*

The interest of the *amicus curiae* is set forth in the motion accompanying this brief.[1]

[1] Pursuant to Supreme Court Rule 37.6, the Office of the Commissioner of Baseball states that no counsel for a party has written this brief in whole or in part and that no person or entity, other than *amicus* or its counsel, has made a monetary contribution to the preparation or submission of this brief. Petitioner has consented to the filing of this brief and the letter of consent has been filed with the Clerk of the Court. Respondent has not consented.

REASONS FOR GRANTING THE PETITION

The processes of collective bargaining, including grievance arbitration, are a fundamental part of the labor-management relationship in Major League Baseball. The Office of the Commissioner of Baseball ("Office of the Commissioner") supports the petition in this case because the court of appeals' decisions improperly intrude upon arbitration as the forum for resolving disputes under the collective bargaining agreement between the Office of the Commissioner and the Major League Baseball Players Association. The lower court's preemptive involvement in the arbitration process supplants the decisionmaker selected by the parties. The court of appeals' ultimate decision to assume the role of fact-finder and decisionmaker requires review by the Court.[2]

THE NINTH CIRCUIT'S DECISION COMMANDING THE ARBITRATOR TO ENTER A DIFFERENT AWARD CONFLICTS WITH GUIDANCE PROVIDED BY THIS COURT AND PRESENTS AN IMPORTANT ISSUE OF FEDERAL LABOR LAW THAT THIS COURT SHOULD RESOLVE.

By taking the unprecedented step of ordering the Arbitrator to change his award and enter one in favor of the claimant Steve Garvey, the Ninth Circuit improperly overstepped its judicial role. The appeals court's error in ordering the Arbitrator to substitute its determination on the merits in place of the Arbitrator's own award presents a significant

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[2] The Office of the Commissioner concurs with each of the petitioner's stated reasons for granting the petition. *Amicus* writes separately on the petitioner's second argument—the proposition that the Ninth Circuit compounded its initial error (that of substituting its own findings of fact for that of the Arbitrator) by thereafter determining the merits of the claim in arbitration and ordering the Arbitrator to enter a judgment in favor of the claimant Steve Garvey, rather than remanding the matter for further arbitral proceedings—in order to provide additional insight on this issue of substantial significance to federal labor policy.

question going to the role of arbitration in federal labor policy that warrants review by the Court.

In ordering the Arbitrator to change his award from one denying the claim to one accepting it *in toto* without any further arbitral consideration, the Ninth Circuit erred by inappropriately treating the arbitral forum as a venue subordinate to the judicial forum. The appeals court handled the arbitration award as it would a district court decision, substituting its own ruling in place of a lower court ruling with which it disagreed. That treatment, however, is antithetical to this Court's rulings according a special extrajudicial status to the arbitral forum. There are important labor policy reasons why the arbitral forum stands on a wholly separate footing from the judicial forum, and deference to that status must be accorded by federal courts.

This Court has provided extensive and clear guidance on the respective roles of labor arbitrators and the courts vis-à-vis the interpretation of labor contracts. First and foremost, when the labor arbitrator assumes the role assigned to him by contract and interprets a collective bargaining agreement, the resulting award must be treated as if it represents an *agreement* between an employer and union about the proper interpretation of their labor contract. *Eastern Associated Coal Corp. v. United Mine Workers of Am., Dist. 17*, 121 S. Ct. 462, 467 (2000). In other words, "the [arbitrator's] award is not distinguishable from the contractual agreement." *Id.*

The courts have a narrowly-defined, albeit important, role in evaluating an award that has been fashioned by a labor arbitrator. First, the courts are charged with determining whether a labor arbitrator performed the job that was assigned to him by the contract. Thus, a court may set aside an arbitrator's ruling when the arbitrator acts outside the scope of his contractually-defined authority. *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960). Second, the courts are charged with determining

whether the arbitrator did his job, but in a manner that creates a conflict between the contract and positive law. Accordingly, in very narrowly-circumscribed circumstances, a court may refuse to enforce a labor arbitration award if that award—*i.e.*, the parties' *de facto* agreement—is contrary to positive law or well-defined public policy. *Eastern Associated Coal*, 121 S. Ct. at 467. Third, the courts may consider whether an arbitrator utterly failed to perform his interpretive function. Thus, a court may vacate an arbitrator's ruling when the arbitrator has not "even arguably" applied the contract or has "ignore[d] the plain language of the contract." *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 38 (1987). Finally, courts may consider whether the arbitrator acted with improper motivations. For example, a federal court need not enforce an arbitral award that was procured through fraud or through the arbitrator's dishonesty. *Id.*

This strict division of labor between arbitral and judicial functions is grounded first in contract. It is the arbitrator's judgment, and all that it connotes, that was bargained for between the parties. *United Steelworkers of Am. v. American Mfg Co.*, 363 U.S. 564, 567-68 (1960). Simply put, the parties bargained for arbitral, not judicial, interpretation of their agreement. Perhaps just as important, the clear separation of powers between the arbitral and judicial fora is grounded in federal labor law and policy. Federal labor statutes "reflect a decided preference for private settlement of labor disputes without the intervention of government." *Misco*, 484 U.S. at 37. In fact, the Labor Management Relations Act of 1947, 61 Stat. 154, 29 U.S.C. § 173(d), expressly provides that "[f]inal adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement."

Given the law and policy underpinning the separation of powers between arbitrator and judge, this Court's precedent recognizes the importance of preserving the status of the arbitral forum by ensuring that the tasks assigned to that forum by contract are, in fact, performed there, and, as a corollary to that principle, by ensuring that federal courts do not treat themselves as superior entities with the right to substitute their own decision-making in areas reserved to the arbitrator. This Court regularly has cautioned lower courts about the impropriety of substituting their judgments for those of arbitrators, explaining that "[t]he federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards." *Enterprise Wheel*, 363 U.S. at 596. In fact, the only way to fully effectuate that important policy is to ensure that "the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given *full play*." *American Mfg. Co.*, 363 U.S. at 566 (emphasis added).

Courts do not have the authority to substitute their construction of a collective bargaining agreement for that of an arbitrator. "[T]he question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for," *Enterprise Wheel*, 363 U.S. at 599 (*citing American Mfg Co.*, 363 U.S. 564), and a court acts improperly when "it usurps a function which . . . is entrusted to the arbitration tribunal." *American Mfg. Co.*, 363 U.S. at 569.

The limitation on the authority of federal courts with respect to arbitral awards means that courts cannot treat arbitral determinations as subordinate decisions and assume that the normal panoply of appellate rules and remedies apply. Given the bargaining parties' agreement to judgment by the arbitrator, courts, for example, "do not sit to hear claims of factual or legal error by an arbitrator as an appellate

court does in reviewing decisions of lower courts." *Misco*, 484 U.S. at 38. The courts do not have an appellate relationship with the arbitral forum and, thus, they may not handle arbitration awards as they would lower court decisions, substituting their own rulings in place of decisions with which they disagree.

Given the clear proscription on courts from arrogating to themselves the functions of labor arbitrators, this Court's precedent dictates that unresolved questions concerning a labor arbitrator's ruling—which, upon close examination, are what underpin the Ninth Circuit's decisions at issue here—must be returned to the arbitral forum for further consideration. A court cannot take over the arbitrator's interpretive role for itself. To permit a court to resolve for itself any questions (whether articulated or not) that it has about a labor arbitrator's decision is to deny the arbitration process its "full play"—a process that must be guaranteed in order to effectuate federal labor policy. *See, e.g., American Mfg. Co.*, 363 U.S. at 566.

This Court's order in *Enterprise Wheel* illustrates the proper procedural treatment to be afforded an arbitration award that leaves questions unsettled in the mind of the court because significant points or issues have not been fully considered or resolved by the arbitrator. In *Enterprise Wheel*, the Court considered a court of appeals' determination refusing to enforce an arbitrator's award ordering backpay and reinstatement to a discharged employee following the termination of a collective bargaining agreement. 363 U.S. at 595-96. This Court affirmed only one aspect of the appeals court's judgment—its conclusion that an ambiguity in the arbitrator's award as to appropriate backpay amounts should be *returned to the arbitral forum for determination by arbitration*. *Id.* at 599. While affirming the remand to the arbitrator, the Court reversed all aspects of the court of appeals' judgment that had involved the lower court's

substitution of its interpretation of the contract for that of the arbitrator. *Id.*

The Court's decision in *Misco* is even more direct on this point, clearly demonstrating that remand to the arbitral forum is appropriate when a court has overriding concerns about whether an arbitrator addressed or resolved issues that are crucial to the interpretation of the contract.[3] The *Misco* decision provides unambiguous guidance to courts about the impropriety of treating the arbitral forum as a subordinate venue, as well as the propriety of remanding issues for further arbitral proceedings:

> [A]s a rule the court must not foreclose further proceedings by settling the merits according to its own judgment of the appropriate result, since this step would improperly substitute a judicial determination for the arbitrator's decision that the parties bargained for in the collective-bargaining agreement. Instead, the court should simply vacate the award, thus leaving open the possibility of further proceedings if they are permitted under the terms of the agreement. The court also has the authority to remand for further proceedings when this step seems appropriate.

484 U.S. at 40-41 n.10. (citation omitted).

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[3] This Court's teachings make it clear, however, that "[a] mere ambiguity in the opinion accompanying an award, which permits the inference that the arbitrator may have exceeded his authority, is not a reason for refusing to enforce the award." *Enterprise Wheel*, 363 U.S. at 598. Given that mandate, lower courts have suggested that remand for further elucidation by an arbitrator is only appropriate (and, otherwise, awards should be enforced) when an arbitration award is so ambiguous or vague as to render it incapable of enforcement. *See, e.g., Aeronautical Machinists Lodge 709, IAM v. Lockheed-Georgia Co.*, 683 F.2d 419, 1982 U.S. App. Lexis 17283, at *14 (11th Cir. 1982), *cert. denied*, 459 U.S. 1205 (1983).

While acknowledging this Court's guidance, the Ninth Circuit rationalized its refusal to remand decision-making to the Arbitrator here by concluding that *Misco* was limited only to situations involving an alleged procedural error by the arbitrator. Pet. 3a n.4. This Court's guidance in *Misco* concerning remand, however, cannot be read so narrowly. While the quoted *Misco* language concededly appears at a point in the case at which the Court was addressing an allegation that the arbitrator had erred in a procedural ruling excluding from consideration certain after-discovered evidence, the Court's discussion of the appropriateness of remand is not expressly limited to alleged arbitral procedural errors. Rather, the *Misco* decision, like the *Enterprise Wheel* case before it, recognizes that remand to the arbitrator is the proper course for addressing a host of potential questions or concerns about an arbitrator's ruling. For example, after observing in *Misco* that the underlying arbitration decision was "cryptic[]" in its analysis of one contract provision, 484 U.S. at 41, the Court held that the appeals court erred in entering a decision based on its own interpretation of the contract, concluding instead that "the proper course would have been remand to the arbitrator for a definitive construction of the contract in this respect." *Id.* at 42. Thus, *Misco* supports the proposition that remand to the arbitral forum is the appropriate course of action when a court has serious questions about whether an arbitrator addressed or resolved issues that are crucial to the interpretation of the contract.

Applying these principles to this case, it is evident that the Ninth Circuit erred in doing precisely what this Court's precedent makes clear is impermissible—usurping the role of the Arbitrator with respect to tasks squarely entrusted to his authority and treating the arbitral forum as a subordinate decision-making venue subject to full appellate review. Looking beneath their surface, the Ninth Circuit's decisions amount to that court's own resolution of a series of implicit questions that the court perceived to be unaddressed in, or

unanswered by, the Arbitrator's decision. These implicit questions answered by the court below included, for example:

> —In ruling that there was a "shadow cast over the credibility of the [Ballard] Smith testimony," Pet. 51a, did the Arbitrator reject any and all of Ballard Smith's testimony (from either 1986 or 1996) as being unworthy of credit, or did the Arbitrator in fact rely in part upon the 1986 collusion arbitration testimony of Ballard Smith?
>
> —If the Arbitrator did actually rely upon some or all of Ballard Smith's 1986 testimony (rather than rejecting as unreliable any Smith testimony from any time period), what factors led him to do so, in light of the fact that the Arbitrator had concluded in an earlier arbitration that the Club owners had colluded to depress player salaries and, in so holding, had rejected 1986 testimony of owners (including Ballard Smith) that no collusion had occurred?
>
> —If the Arbitrator did not credit Ballard Smith's 1986 testimony specific to Garvey (in light of the arbitrator's prior determination that the owners' testimony concerning the absence of collusion should not be credited), why did he not then credit those portions of Smith's 1996 testimony which reversed the earlier 1986 testimony, and, further, why did the Arbitrator not accept the 1996 testimony as definitively establishing the merit of Garvey's claims?
>
> —In finding "the absence of any other corroboration of the claim submitted by Garvey [other than the uncredited 1996 Ballard Smith testimony]," Pet. 51a, did the Arbitrator rely on the fact that the claimant Garvey himself had submitted materials (in the form of Claims Questionnaires) to the MLBPA that were contrary to his

position that he had received an express offer from the Padres in 1985? [4]

—If the Arbitrator did rely on Garvey's own assertions in his Claims Questionnaires in concluding that his claims were not corroborated by the evidence, did the Arbitrator alter his own procedural rule that he would not treat as definitive "conflicting claims" that Players had advanced earlier in the claims procedure [5], or was that rule limited to inconsistent positions taken by Players on such matters as eligibility for, or amounts of, claims, rather than inconsistencies in factual allegations?

Faced with such unanswered questions, the court of appeals should not have overstepped its authority and taken on the responsibility vested solely in the Arbitrator. Instead, if the Ninth Circuit had serious concerns about possible missteps or gaps in the Arbitrator's decision-making process,

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[4] The Ninth Circuit stated in its original February 10, 2000 decision that "the record contains no indication that the arbitrator relied on the questionnaires." Pet. 23a n.6. However, the Arbitrator's July 16, 1999 award covering 1989 lost salary claims expressly questions "[t]he credibility of the Garvey testimony" and refers to "the original statement of the Garvey claim, along with the accompanying collusion claims questionnaire." Pet. 43a. As the court of appeals explained in its original decision, Garvey never alleged that he had received a specific offer from the Padres until the arbitration hearing on his claim—which took place after the MLBPA issued its Partial Distribution Plan formulated, in part, on information gleaned from Players' Claims Questionnaires. Pet. 14a. Garvey submitted questionnaires in 1988 and 1991 which never asserted he had received an extension offer. Pet. 15a. In fact, Garvey stated in his questionnaire responses that it "would have been reasonable" for the Padres to pursue an extension, *id.*—strongly inferring that the Club did not. Further, his responses described negotiations in 1986 in which the Padres expressed interest in retaining Garvey beyond 1987 but nonetheless declined to talk about an extension until a later date. *Id.*

[5] This rule is described and quoted in the Ninth Circuit's original decision without record citation. Pet. 23a n.6.

then the only proper course of action it had before it was remand to the arbitral forum—a course that this Court frequently has noted as appropriate in comparable circumstances. What the court of appeals could not permissibly do was substitute its own judgment for that of the Arbitrator. By granting the petition and reversing the Ninth Circuit, this Court will ensure that the appropriate deference is granted to the arbitral forum under federal labor law and policy.

CONCLUSION

For the reasons stated in the petition and in this *amicus* brief, this Court should grant the petition.

Respectfully submitted,

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